

United States Government

NATIONAL LABOR RELATIONS BOARD

Region 26

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June 22, 2006

Mr. Andrew McNeil, Attorney
Bose McKinney & Evans LLP
135 N. Pennsylvania St, Ste 2700
Indianapolis, IN 46204

Re: Southern Bakeries, LLC
Case 26-RM-469

Dear Mr. McNeil:

The above-captioned case, petitioning for an investigation and determination of representative under Section 9(c) of the National Labor Relations Act, has been carefully investigated and considered. Initial processing of the petition, filed February 14, 2006, was blocked by pending unfair labor practice charges in Case Nos. 26-CA-21843, *et al*, in which the Administrative Law Judge's Decision issued May 12, 2006. Exceptions to the ALJD are due before the Board by June 30, 2006. Additionally, on February 15, 2006, the incumbent Union filed Case No. 26-CA-22384 in which a complaint issued on June 19, 2006, alleging the Employer unlawfully refused to execute a collective-bargaining agreement prior to filing the instant petition.

My administrative investigation failed to establish sufficient evidence that the unfair labor practices alleged in Case Nos. 26-CA-21843, *et al*, caused employee disaffection which resulted in the filing of the petition herein. Accordingly, I am not relying upon those unfair labor practice allegations as a basis for dismissal of the petition. However, it is clear that the unfair labor practice allegations in Case No. 26-CA-22384, if ultimately found to have merit as alleged in the outstanding complaint, warrant dismissal of the petition. Thus, once an incumbent union has accepted a contract offer, the employer cannot challenge its majority status by filing an RM petition. *Auciello Iron Workers*, 317 NLRB 364, 374 (1995). Accordingly, I am dismissing the petition, subject to reinstatement upon appropriate application by the Petitioner, in accordance with Representation Case-Handling Manual Section 11733 and 11733.2(b).

Pursuant to the National Labor Relations Board's Rules and Regulations, any party may obtain a review of this action by filing a request therefor with the National Labor Relations Board, Washington, D.C. 20570. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned. This request for review must contain a complete statement setting forth the facts and reasons on which it is based. The request for review (eight copies) must be received by the Executive Secretary of the Board by

close of business on July 6, 2006. Upon good cause shown, however, the Board may grant special permission for a longer period within which to file. A request for extension of time should be submitted to the Executive Secretary in Washington, and a copy of any such request for extension of time should be submitted to this Office and to each of the other parties to this proceeding.

The request for review and any request for extension of time must include a statement that a copy has been served on this Office and on each of the other parties to this proceeding in the same or a faster manner as that utilized in filing the request with the Board.

Very truly yours,

Ronald K. Hooks
Regional Director

cc: Mr. Rickey G. Ledbetter
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